IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 26997 of 2006(L)

PETITIONER:

A.AHAMMED KABEER,
4/338, PALAM BAZAR,
PUDUNAGARAM, PALAKKAD DISTRICT.

BY ADV. SRI.H.BADARUDDIN

RESPONDENTS:

1.PUDUNAGARAM GRAMA PANCHAYATH,
REP. BY ITS SECRETARY.

2.THE HEALTH INSPECTOR,
COMMUNITY HEALTH CENTER,
KODUVAYUR, PALAKKAD.

3.THE ASSISTANT EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, BUILDING AND ROADS,
CHITTUR, PALAKKAD DISTRICT.

4.THE ASSISTANT EXECUTIVE ENGINEER,
KERALA WATER AND WASTE WATER AUTHORITY,
CHITTUR, PALAKKAD.

R1 BY ADV. SRI.A.SREERAMAKRISHNAN
R4 BY ADV. SMT.AMBIKA DEVI, SC, KWA
R2-R3 BY GOVT. PLEADER MR.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/01/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.26997 of 2006

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Dated: 17th January, 2007

JUDGMENT

A resident of Pudunagaram Grama Panchayat, the 1st respondent is the petitioner. The Health Inspector of Community Health Centre, Koduvayur, Palakkad is the 2nd respondent and the Assistant Executive Engineer, P.W.D, Building and Roads, Chittur is the third respondent while the Assistant Executive Engineer, Kerala Water Authority, Chittur is the 4th respondent. The case of the petitioner is that the 1st respondent Panchayat has failed to implement sanitation programme in the matter of providing infrastructure to draw sullage from the dwelling houses to the sewerage constructed by the P.W.D. The petitioner claims ownership over certain properties within the area of the 1st respondent-Panchayat by virtue of Ext.P1 document executed in favour of the petitioner's son. According to the petitioner the houses situated on Ext.P1 property were constructed as per the plan approved by the 1st respondent-Panchayat. Ext.P3 is the building permit issued by the Panchayat. Ext.P4 is the tax receipt and Ext.P5 is the completion plan of the building constructed on Ext.P1 property. On 26.9.2006 the petitioner received Ext.P6 notice from the 2nd respondent-Health Inspector in which it is stated that the sullage water discharged from

Ext.P1 property oozes in to the public pathway and therefore the petitioner has to discharge the sullage water in a soak pit covered by a slab. The petitioner submits that since Ext.P1 property is completely covered with buildings and there is no space for making soak pit, he has taken recourse to discharge the sullage water from Ext.P1 property to the nearby sewerage intended for discharging sullage water of the houses nearby. This sewerage, according to the petitioner, has been constructed by the side of the P.W.D.Road by either the third respondent or the 4th respondent. The petitioner accordingly wanted the permission to lay P.V.C. pipes by the side of the Panchayat pathway located in front of his houses on Ext.P1 property. Ext.P7 is copy of the representation submitted by the petitioner before the 1st respondent-Panchayat. To Ext.P7 the 1st respondent has issued Ext.P8 reply. In Ext.P8 it is stated that permission is declined. The petitioner is aggrieved by the attitude of the 1st respondent. He refers to Section 234A of the Kerala Panchayat Raj Act and also to Third Schedule to the Kerala Panchayat Raj Act and submits that the water supply and sewerage services under the Water Authority has now been vested with the 1st respondent-Panchayat with effect from 24.3.1999. Therefore the duties and

functions of the Grama Panchayat in the matter of providing infrastructure like making of drainage and sewerage for the discharge of sullage water cannot be neglected in view of Section 234A read with Clause V of heading 12 (Public Health and Sanitation) mentioned in Third Schedule to the Kerala Panchayat Raj Act. The Panchayat has neglected its duty for implementation of the sanitation programmes by issuing Ext.P8. Raising various grounds, the petitioner prays in this Writ Petition that Ext.P8 be quashed and a writ of mandamus be issued commanding the 1st respondent to grant permission to the petitioner for laying P.V.C. pipe at the cost of the petitioner beneath the Panchayat land nearby for discharging the sullage water from the houses on Ext.P1 property to the sewerage nearby constructed by the P.W.D. within a time frame. There is a further prayer in the writ petition for issuance of a writ of mandamus commanding the third respondent to allow the petitioner to discharge the sullage water from the house on Ext.P1 property to the sewerage nearby constructed by the P.W.D. by the side of the Pudunagaram-Koduvayur main road within a time frame. Alternative prayers are also made in the Writ Petition.

2. The Panchayat has filed a detailed counter affidavit producing

documents Exts.R1 to R1(c) along with the same. It is stated therein that the petitioner after purchase of the land measuring 4.84 cents has constructed one line building consisting of three houses on the property. The buildings are presently let out to the tenants. There are 16 occupants in the houses. Used water with foul smell which is polluted and unhygienic is being discharged from the houses through P.V.C. pipe to a pit dug by the petitioner on the side of the public road leading to the Government L.P.School and Railway Station. The locality is a densely populated one. Because of the above nuisance perpetrated by the petitioner, the residents of the locality gave petitions dated 21.8.2006 and 7.10.2006 to the 1st respondent and to the other authorities including the Health Inspector, the 2nd respondent for taking action for abating the nuisance. The 2nd respondent after conducting inspection and other enquiries submitted a report to the 1st respondent recommending to take immediate action in the interest of public health and to maintain hygiene in the locality by abating the nuisance created by the petitioner. It is further stated that the Health Inspector has instructed the petitioner to dig up a pit in the compound of the petitioner and drain the polluted waste water in the pit and cover the same with concrete slab as has

been done by other residents of the locality so that the nuisance could be abated. The petitioner did not lend his ears to the advice and instruction given by the Health Inspector. Ext.R1(a) is copy of the report of the Health Inspector. The 1st respondent further submits that after receiving Ext.R1(a) the petitioner out of mala fides and without complying with the directions given by the 2nd respondent, submitted Ext.P7 before the 1st respondent. The first respondent after getting Ext.P7 from the petitioner inspected the place and conducted enquiry. On inspection it was found that the request of the petitioner is false and not grantable. After discussions the Panchayat took a decision not to grant the request of the petitioner since the drainage belongs to the P.W.D. and the 1st respondent has no say in the matter. Ext.R1(b) dated 30.9.2006 is copy of the letter. The first respondent contends that the petitioner is not entitled for the reliefs sought for. The first respondent has issued notice show-cause notice to take action against the petitioner under Section 219 and 254 read with Rules 24, 25 and 26 of the Act and copy of the same is produced as Ext.R1(c). It is further stated that it is in order to circumvent Exts.R1(b) and R1(c) that the Writ Petition has been filed.

3. To the above counter affidavit, the petitioner has filed a

detailed reply affidavit reiterating his earlier contentions. The 1st respondent has filed an additional counter affidavit also. In the additional counter affidavit it is stated that on inspection of the building of the petitioner and the locality by respondents 1 and 2 it was seen that filth water from the three houses of the petitioner is overflowing and let out into the public street and allowed to be filled up in a pit dug on the public street by the petitioner and kept open. Exts.R1(d) and R1(e) photographs are relied on in this context. The contention of the petitioner that there is no place in the line building to dig pit for draining the water is denied. It is contended that the petitioner has enough space in all the three houses for the said purpose. Pits can be dug and can be covered concrete slabs as directed. The allegation of the petitioner that there is sewerage nereby the houses for discharging sullage water and the sewerage is constructed nearby P.W.D.Road is denied. The petitioner's contention that the distance between the building of the petitioner and the P.W.D. drainage on the public road is approximately 35 metres length is described as a false contention. The distance will be 150 metres and the 150 metres distance to the public Panchayat street leading to the P.W.D.Road lies on a higher level, i.e. more than three

feet higher and therefore it is not at all possible to drain away the filth water from the houses of the petitioner by putting P.V.C.Pipe beneath the Panchayat public street which is on a higher level. In order to show the higher level distance between the Panchayat street leading to P.W.D.Road and the petitioner's property, the 1st respondent has produced Ext.R1(f) photograph. It is stated that the P.W.D. drainage is situated on both sides of the State Highway far away from the line building of the petitioner. On either side of the State Highway in the town abutting the drainage there are commercial shops and therefore if the request of the petitioner is to be granted, the general hygiene of the public would be affected on account of the flow and foul smell of the filth water in the drainage. Answering the contentions based on the obligation of the Panchayat to take up sanitation programmes, it is contended that the Panchayat is taking steps for implementing sanitation programmes as per clause 5 in the heading XII in the III Schedule of the Act as laid down in sub-section (1) of Section 166. It is pointed out that as per sub-section (1) of Section 166 the Government has to give guidelines and assistance financial, technical or otherwise to the Village Panchayat in the matter of preparing and implementing schemes regarding the

matters enumerated in the III Schedule and there is no laches on the part of the Panchayat at all.

4. Elaborate submissions were addressed before me by Mr.H.Badruddin, learned counsel for the petitioner and Mr.A.Sreeramakrishnan, learned counsel for the 1st respondent-Panchayat. Apart from making submissions on the basis of the pleadings and the documents placed on record Mr.Badruddin would refer to Exts.P3 and P7 and invite my attention to Section 234A and IIIrd Schedule of the Panchayat Raj Act. I have also heard the submissions of Smt.Ambika Devi, Standing Counsel for the Kerala Water Authority. Mr.Sreeramakrishnan would invite my attention to the pleadings raised and the documents placed on record by the Panchayat and submit that the petitioner is not entitled for any relief. Smt.Ambika Devi, Standing Counsel for the Water Authority would support the submissions of Mr.Sreeramakrishnan.

5. Having regard to the rival submissions made at the Bar and having considered the rival pleadings in the light of the documents placed on record, I am of the view that the petitioner is not entitled for reliefs by invoking the extra-ordinary jurisdiction of this court. The Writ Petition will stand dismissed. However it is made clear that the

petitioner's statutory remedies against Ext.P3 are kept open. If the petitioner prefers an appeal within one month of receiving a copy of this judgment, the appeal will be entertained and disposed of by the Appellate Authority in accordance with law.

srd **PIUS C.KURIAKOSE, JUDGE**